

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of

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Access Charge Reform

)
) CC Docket No. 96-262

Price Cap Performance Review
for Local Exchange Carriers

)
) CC Docket No. 94-1

Transport Rate Structure
and Pricing

)
) CC Docket No. 91-213

Usage of the Public Switched
Network by Information Service
and Internet Access Providers

)
) CC Docket No. 96-263
)

**COMMENTS OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS**

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January 29, 1997

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SUMMARY OF COMMENTS

The Commonwealth of the Northern Mariana Islands ("Commonwealth") generally supports the Federal Communications Commission's ("Commission's") goal of access charge reform and agrees with the Commission's conclusion that the current access charge system promotes artificially high prices, including potentially inflated long distance charges. The Commonwealth, an insular area with among the highest access charges in the nation and a per capita income of less than half that of the nation as a whole, is particularly affected by inflated access charges.

The Commonwealth opposes the Commission's proposals in its Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry ("Notice") to increase or deaverage the SLC, or to eliminate the SLC cap for second and additional lines for residential customers and for all lines for multi-line business customers.

Implementation of these proposals would violate Section 254(b)(3) of the Telecommunications Act of 1996 ("1996 Act"), which requires that consumers in all parts of the country have access to telecommunications services at rates that are "reasonably comparable" to rates in large competitive markets. The Commonwealth believes that increased, deaveraged or uncapped SLC charges would result in relative access charge increases that (due to the Commonwealth's low per capita income level and status as a high cost area) would have a disproportionate adverse impact on Commonwealth ratepayers. As shown below, the Commonwealth does not believe that Section 254(e) of the 1996 Act requires increased, deaveraged or uncapped SLCs.

The Commonwealth also believes that the 1996 Act does not require that access charges be deaveraged. Like increased, deaveraged or uncapped SLC charges, deaveraged access charges are not mandated by Section 254(e) and would violate Section 254(b)(3). Moreover, deaveraged access charges could undermine the benefits of rate integration in the Commonwealth, causing consumers to continue to pay inflated rates for long-distance service.

If the Commission does adopt its proposals to modify the SLC or to deaverage access charges, it should consider the unique impact such steps could have on the Pacific insular areas. Nonetheless, should the Commission decide to adopt these proposals, it should--at least with respect to the Commonwealth--implement a transition period of at least five years, not the three-year timetable suggested in the Notice.

The Commonwealth supports a prescriptive approach toward access charge reform. A generalized marketplace approach simply will not work because competition cannot be expected to evolve consistently in markets throughout the country. In the interest of ensuring that the goals of the 1996 Act are met, the Commission must continue to supervise and regulate access rates.

Finally, the Commonwealth supports the Commission's tentative conclusion that information service providers, including internet access providers, remain exempt from the payment of access charges.

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)	

**COMMENTS OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("Commonwealth"),¹ by its attorneys, respectfully submits its comments in response to the Federal Communications Commission's ("Commission's" or "FCC's") Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry ("Notice"), released on December 24, 1996, in the above-captioned matters.²

¹ These Comments are filed by the Office of the Governor on behalf of the people of the Commonwealth.

² In re Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry in Dkt Nos. 96-262, 94-1, 91-213 and 96-263, FCC 96-488 (Dec. 24, 1996).

I. INTRODUCTION

As shown below, the Commonwealth supports the Commission's goal of access charge reform. However, the Commonwealth is strongly opposed to either deaveraging, increasing or uncapping the Subscriber Line Charge ("SLC"), or deaveraging access charges. If the Commission adopts any of these proposals, the Commonwealth urges the Commission to take into account the unique impact such a step will have on Commonwealth ratepayers and the Commonwealth market. The Commonwealth favors a prescriptive approach to access reform and supports the Commission's proposal to continue exempting information service providers ("ISPs") from access charges.

The Commonwealth consists of 14 islands strategically located in the North Pacific Ocean approximately 3,300 miles west of Honolulu, 1,200 miles southeast of Tokyo and 50 miles north of the Territory of Guam ("Guam"). The total land area of the Commonwealth is slightly larger than 2.5 times that of the District of Columbia.³ The populated islands of the Commonwealth (i.e., Saipan, Tinian and Rota) have a total population of 58,846 persons.⁴

The Commonwealth is a self-governing commonwealth in political union with and under the sovereignty of the United States. The relationship between the Commonwealth and the United States is governed by the "Covenant to Establish a Commonwealth of the Northern

³ Central Intelligence Agency, World Factbook 290 (1993). A map of the Commonwealth is attached as Exhibit A.

⁴ See Department of Commerce, Commonwealth of the Northern Mariana Islands, Statistical Snapshot, in Commerce in the Commonwealth (Department of Commerce, 1996).

Mariana Islands in Political Union with the United States of America."⁵ Among other things, the Covenant provides that persons born in the Northern Mariana Islands both before and after the Covenant took effect are United States citizens.⁶ Subject to certain exceptions, federal law applies to the Commonwealth.⁷

The Commonwealth and Guam will officially join the North American Numbering Plan ("NANP") on July 1, 1997⁸--a development that was aided by the explicit recognition in the Telecommunications Act of 1996 that the Pacific insular areas are, in fact, part of the U.S. domestic telecommunications market.⁹ Until 1997, the Commonwealth was one of only three U.S. Pacific insular points that were not yet members of the NANP.

The Commonwealth, along with Guam and American Samoa, will also be incorporated

⁵ See 48 U.S.C. § 1801 note (Supp. 1995), approved by Congress in Public Law 94-241 (Mar. 24, 1976), 90 Stat. 263 ("Covenant"). The Covenant was entered into following a plebiscite held under the United Nations' supervision in which the residents of the Commonwealth voted to enter into political union with the United States as a commonwealth.

⁶ Covenant at § 301.

⁷ U.S. Department of the Interior, Office of Insular Affairs, A Report on the State of the Islands 30 (Aug. 1996).

⁸ Letter from Ronald M. Connors, Bellcore Director of NANP Administration, to Commonwealth Governor Froilan C. Tenorio (May 10, 1996).

⁹ See Conference Agreement on Sec. 254(b), which cites "the addition of 'insular areas' (such as the Pacific Island territories)...to the list of consumers to whom access to telecommunications and information services should be provided." H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 131 (1996).

in the Commission's rate integration policy effective August 1, 1997.¹⁰ This development was the direct result of Section 254(g) of the 1996 Act which codifies the Commission's long-standing rate integration policy and extends it to the Pacific insular areas.¹¹

The provision of local exchange services in the Commonwealth is currently not competitive.¹² The Commonwealth's sole provider of both local exchange services and exchange access services (including both switched and special access services) is Micronesian Telecommunications Corporation ("MTC").¹³ In addition to its dominance of the local service market, MTC is also the dominant provider of domestic and international off-island services in the Commonwealth. Only one other interexchange carrier, IT&E Overseas, Inc., has established a point-of-presence in the Commonwealth.¹⁴ The Commonwealth anticipates that the

¹⁰ See In re Implementation of Section 254(g) of the Communications Act of 1934, as Amended, Report and Order in CC Dkt. No. 96-61, FCC 96-331, ¶ 66 (Aug. 7, 1996).

¹¹ 1996 Act at § 254(g).

¹² To date, the telecommunications regulatory authority in the Commonwealth--the Commonwealth Utilities Commission--has not considered a single request for interconnection, nor for the provision of unbundled network elements or resold local exchange services pursuant to Section 251 of the 1996 Act. 1996 Act at § 251.

¹³ MTC is owned and controlled by GTE Hawaiian Telephone Company Incorporated which, in turn, is owned and controlled by GTE Corporation. See, e.g., Comments of GTE Service Corporation to the Petition for Rulemaking to Provide Rate Integration in File No. AAD 95-86, at 1 n.1 (Aug. 15, 1995). In February 1996, GTE Hawaiian Telephone purchased the remaining minority shares in MTC, increasing its ownership interest in MTC to 100 percent. Arthur Andersen LLP, Rep. of Independent Pub. Acct. 12 (Mar. 8, 1996).

¹⁴ See Comments of IT&E Overseas, Inc. to the Notice of Proposed Rulemaking in CC Dkt. No. 96-61, at 10 (Apr. 19, 1996).

introduction of rate integration and the region's imminent entry into the NANP will attract new long distance competitors to the Commonwealth.

At present, access charges in the Commonwealth would appear to be among, if not, the highest in the nation. For example, at \$0.0835754 per minute, MTC's terminating premium carrier common line ("CCL") charge in the Commonwealth¹⁵ is 10 times the nationwide CCL charge of \$0.0082 levied by member companies of the National Exchange Carrier Association.¹⁶ Moreover, MTC's terminating premium CCL charge in the Commonwealth is 7.7 times GTE's analogous CCL charge for calls in Alaska, 4.3 times the charge for Hawaii and 3.3 times GTE's highest terminating premium CCL charge on the U.S. mainland (for Texas).¹⁷ A chart comparing selected access rates of GTE (*i.e.*, MTC) in the Commonwealth versus its Hawaiian, Alaskan and highest mainland U.S. rates is attached as Exhibit B.

II. THE COMMONWEALTH SUPPORTS PROMPT ACCESS CHARGE REFORM

The Commonwealth supports the Commission's goal of reforming access charges. The Commission has acknowledged that the current access charge system promotes artificially high

¹⁵ GTE Telephone Operating Companies Tariff F.C.C. No. 1, effective July 1, 1996, at 40th Revised Page 303.3.8.

¹⁶ National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, effective July 1, 1996, at 33rd Revised Page 17.1.

¹⁷ See supra note 15 at 40th Revised Page 308.3.8.

pricing, including potentially inflated long distance charges.¹⁸ In addition, the Commission has determined that the current system restricts the ability of price cap incumbent local exchange carriers ("LECs") to lower their access prices¹⁹ and inhibits the development of competition for low volume end users.²⁰ Further, the Commission has found that the current system is "fundamentally inconsistent" with the competitive telecommunications market envisioned by the 1996 Act.²¹ The Commonwealth agrees with these observations. As an insular area that experiences high access charges and a per capita income well below the national average,²² the Commonwealth fully supports the FCC's efforts to reduce access charges to economically efficient levels.

¹⁸ According to the Commission's Notice, "Rather than fostering efficient pricing and competition, these mandatory rate structures inflate usage charges and reduce charges for connection to the network, in essence overcharging high-volume end users in order to reduce rates for low-volume end users." Notice at ¶ 7.

¹⁹ Id. at ¶ 12.

²⁰ Id. at ¶ 8.

²¹ Id. at ¶ 6.

²² The per capita income in the Commonwealth in 1995 was just \$6,984, or slightly more than 42% of the average per capita income of \$16,555 in the United States as a whole. See figures in State of the Islands, supra note 7, at 123. This figure also reflects a disturbing trend--a continuing drop in per capita income in the Commonwealth. The average per capita income on the Commonwealth has dropped \$597 in four years, from the 1991 figure of \$7,581. U.S. Department of the Interior, Office of Insular Affairs, A Report on the State of the Islands 126 (Aug. 1995).

**III. THE COMMONWEALTH STRONGLY OPPOSES
DEAVERAGED, INCREASED OR UNCAPPED
SLCs AS WELL AS DEAVERAGED ACCESS CHARGES**

The Commission advances several proposals to recover a greater portion of local loop costs through the SLC.²³ For example, the Commission proposes either increasing or deaveraging the SLC,²⁴ or eliminating the cap on the SLC for second and additional lines for residential customers and for all lines for multi-line business customers.²⁵ In addition, the Commission also proposes allowing LECs to deaverage their access charge elements.²⁶ The Commonwealth strongly opposes these proposals.

A. SLC Charges Should Not Be Increased, Uncapped or Deaveraged

The Commonwealth opposes the Commission's proposal to increase or deaverage the SLC, or to eliminate the SLC cap for second and additional lines for residential customers and for all lines for multi-line business customers.

The Commission justifies its proposal by suggesting that the geographic averaging inherent in a uniform, nationwide SLC entails an implicit subsidy and therefore violates Section 254(e) of the 1996 Act. According to the Commission, "section 254(e) requires us to adopt only

²³ The current SLC rate is \$3.50 per month for residential and single-line business users and \$6.00 per month for multi-line business users. Notice at ¶ 57.

²⁴ Id. at ¶ 180.

²⁵ Id. at ¶ 60.

²⁶ Id. at ¶ 180.

explicit subsidies for universal service support."²⁷

To the contrary, the language of Section 254(e) does not require the Commission to deaverage, uncap or increase SLCs. Section 254(e) states, "[a]ny such support should be explicit and sufficient to achieve the purposes of this section."²⁸ The word "should" is not equivalent to "shall" or "must" and should be read as a discretionary standard. The Commission is not required to adopt only explicit support subsidies, although the word "should" implies that such an approach would be preferred. If Section 254(e) were construed to bar any SLC averaging, the logical extension of such an approach would undermine the use of study areas at all and compel individually costed and priced SLCs, a thoroughly impractical notion.

The Commission's proposal to increase or deaverage the SLC, or remove the SLC cap would violate Section 254(b)(3) of the 1996 Act. Section 254(b)(3) requires that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services...that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."²⁹ Were the SLC increased, deaveraged or uncapped, SLC charges in insular as well as rural and high cost areas would undoubtedly increase. Given the Commonwealth's status as an insular, high cost and rural area as well as the fact that the Commonwealth already has

²⁷ Id. at ¶ 67.

²⁸ 1996 Act at § 254(e) (emphasis supplied).

²⁹ 1996 Act at § 254(b)(3).

among the highest access charges in nation, SLC charges could be expected to increase more in the Commonwealth than perhaps anywhere else. Any such increase would be even greater in relative terms due to the Commonwealth's low per capita income level.³⁰ In light of the potentially significant and disproportionate increase in SLC charges which would likely occur in the Commonwealth, the Commonwealth does not believe that its consumers would have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas were LECs allowed to increase, deaverage or uncap SLC charges.

**B. Geographically Deaveraged Access
Charges Are Inconsistent With Section 254(g)**

The Commonwealth also opposes the Commission's proposal to allow LECs to deaverage access charges. Just as increased, deaveraged or uncapped SLCs are not mandated by Section 254(e), deaveraged access charges are not required by this provision either.³¹ Moreover, not only would deaveraged access charges violate Section 254(b)(3), as discussed supra text

³⁰ See supra note 22. The Commonwealth's population of 58,846 persons is divided primarily between the three islands of Saipan, Tinian and Rota. Saipan, the largest of the Commonwealth's islands, has a total land area of 184.5 square miles and is home to 90% of the Commonwealth's population. Tinian, which is located 2.75 miles south of Saipan, has a total land area of 39 square miles and is home to approximately 5% of the Commonwealth's residents. Rota, also with approximately 5% of the Commonwealth's residents, is 73 miles south-southwest of Saipan. Fewer than 1% of the Commonwealth's residents live in the Northern Islands. See supra note 4. See also Exhibit A. Increased or uncapped SLC charges are likely to rise especially sharply for the isolated consumers on Tinian and Rota.

³¹ See supra text at note 28.

accompanying note 30, but they would contravene Section 254(g).³²

Section 254(g) provides, in relevant part, "that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State."³³ The potentially large access charge increases likely to result in the Commonwealth were access charges to be deaveraged would ultimately be passed off to consumers in the form of higher prices for long distance, interexchange services. Were the increases high enough, they could undermine the intended benefits of rate integration in the Commonwealth, causing consumers in the Commonwealth to pay more for long distance services than consumers in other states, in violation of Section 254(g).

**C. If the Commission Does Decide to Implement the Above Proposals,
It Should Specifically Consider Their Impact on the Insular Areas**

In the recent Recommended Decision issued by the Federal-State Joint Board on Universal Service, the Joint Board recognized the "special circumstances faced by carriers and consumers in the insular areas of the United States, particularly the Pacific Island territories."³⁴ For example, the Joint Board exempted the Pacific insular areas indefinitely from being treated

³² Indeed, the Notice even acknowledges that incumbent LECs which support immediate geographic deaveraging for access charges, have "asserted that costs vary significantly between urban and rural areas." Notice at ¶ 181. This alone strongly suggests that any such deaveraging would violate Section 254(g) of the 1996 Act.

³³ 1996 Act at § 245(g).

³⁴ In re Federal-State Joint Board on Universal Service, Recommended Decision in CC Dkt. No. 96-45, FCC 96J-3 at ¶ 434 (Nov. 8, 1996).

under the proxy models, given the proxy models' failure to adequately address insular issues.³⁵ If the Commission does elect to implement its proposals to either deaverage, uncap or increase SLCs or deaverage access charges, the Commonwealth urges the Commission to consider the unique impact such steps could have on the Pacific insular areas.

Alternatively, should the Commission decide to adopt any of these proposals, the Commonwealth favors a transition period of at least five years, not the three-year time frame suggested by the Commission.³⁶ Given the Commonwealth's low subscribership levels, low per capita income, current high access and long distance telecommunications costs, any increase in either the SLC or access charges themselves could have an enormously disproportionate (and potentially unlawfully discriminatory) impact on insular areas such as the Commonwealth.

IV. THE COMMONWEALTH FAVORS A PRESCRIPTIVE APPROACH TO ACCESS REFORM

The Commonwealth favors a prescriptive approach to access-charge reform because only through such an approach can the Commission ensure that access charges do not increase to exorbitant levels in the Commonwealth and other insular areas.

A marketplace approach simply will not work effectively because competition will not evolve simultaneously in all markets. Despite the Commonwealth's recent strides in becoming part of the U.S. telecommunications infrastructure, it will remain characterized by low

³⁵ Id. at ¶ 437.

³⁶ Notice at ¶ 66.

population density and high costs for the foreseeable future. In all likelihood, the Commonwealth would be among the last markets to potentially benefit from a market-based approach. Indeed, it is conceivable that competition in the Commonwealth may never develop.

On the other hand, a prescriptive approach, one in which the Commission supervises markets to ensure that rates are "just, reasonable and affordable,"³⁷ will ensure that the standards contained in Section 254 of the 1996 Act are met. Moreover, the Commission itself even acknowledges that a prescriptive approach will bring access charges closer to cost in a more "predictable and uniform" manner.³⁸ A prescriptive approach will also better enable the Commission to tailor reformed access charges to take into account the unique circumstances in the Commonwealth.

**V. ACCESS CHARGES SHOULD NOT APPLY TO INFORMATION
SERVICE PROVIDERS, INCLUDING INTERNET SERVICE PROVIDERS**

The Commonwealth supports the Commission's tentative conclusion that ISPs should remain exempt from the payment of access charges.³⁹

Given its distant and remote location, the Commonwealth critically depends on access to low cost information services as its link to the information infrastructure. Due to the Commonwealth's low per capita income level, an increase in consumer prices to access or use

³⁷ 1996 Act at § 254(b)(1).

³⁸ Notice at ¶ 219.

³⁹ Id. at ¶ 288.

information/Internet services (which the application of access charges to ISPs would effectuate) could preclude access for many Commonwealth consumers.

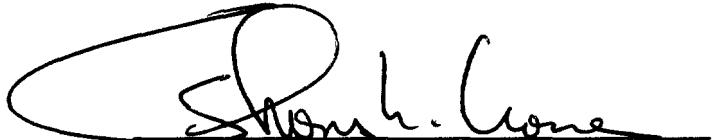
The Commonwealth applauds the Commission's historical policy to exempt ISPs from access charges. As the Commission recognizes, its policy has allowed the Internet and information services industries to develop to the extent they have today, yielding enormous public benefit.⁴⁰ The Commonwealth in particular has benefitted from these information services. Thus, the Commonwealth urges the Commission to continue to promote the development of information services and the Internet, and to not extend access charges to ISPs.

⁴⁰ Id. at ¶ 285.

VI. CONCLUSION

In reforming its access charge rules and policies, the Commission should adopt and implement the proposals discussed above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", written over a horizontal line.

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Dated: January 29, 1997

Exhibit A

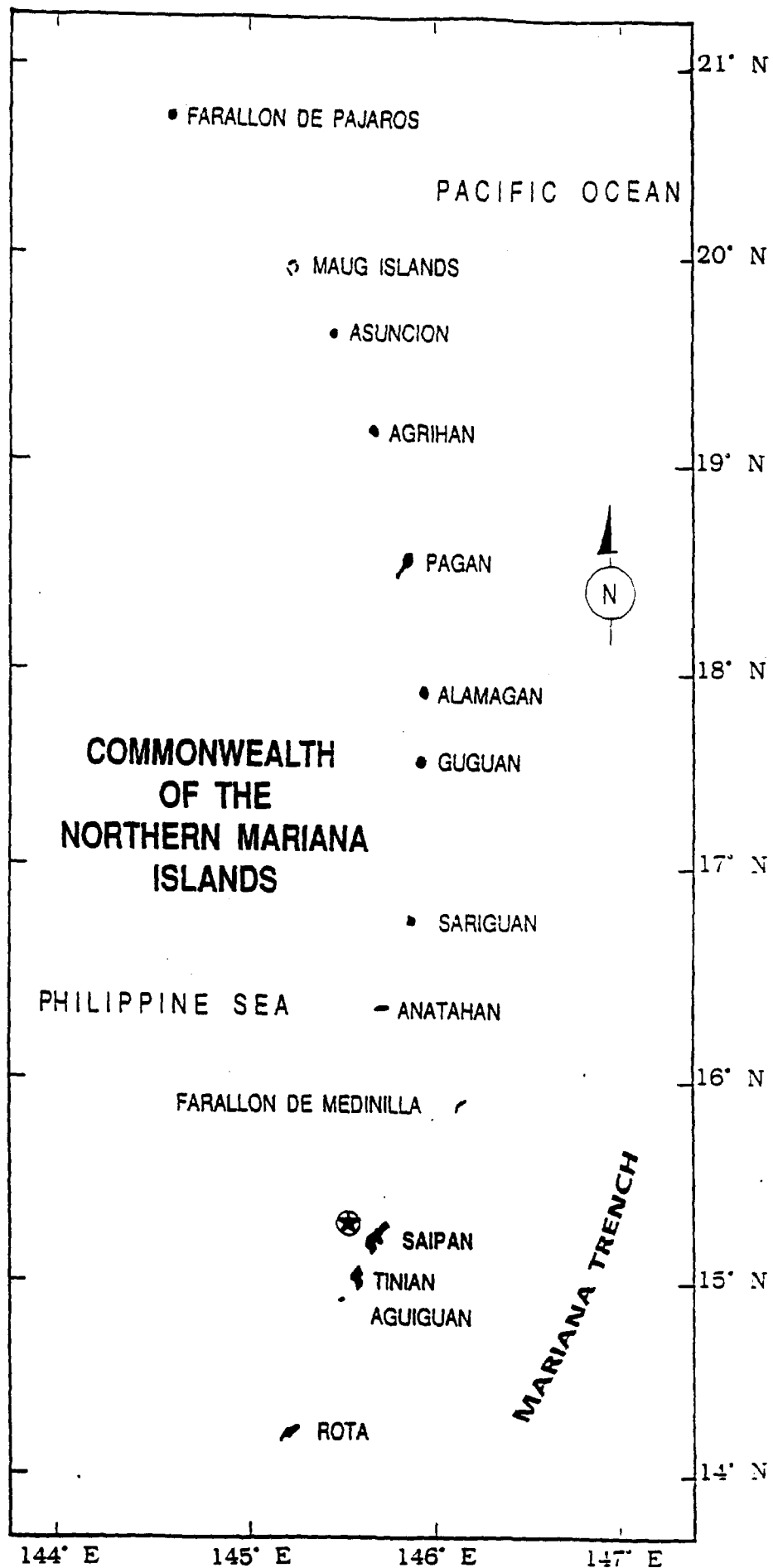


Exhibit B

**Comparison of Selected Access Rates of GTE in the Commonwealth vs.
Its Hawaiian, Alaskan and Highest Mainland Charges**

Prices shown in dollars per access minute (except as indicated)

	CNMI (MTC)	Hawaii	Alaska	Highest Mainland Charge
Premium Switched Transport Interconnection ¹	0.0469277	0.0068871	0	0.0152889 (Idaho)
Premium End Office Switching - Bundled ²	0.521124	0.0146261	0.0332727	0.0415015 (Minnesota)
Premium End Office Switching - Unbundled ³ and Circuit Switched Trunk ⁴	0.0521124	0.0146167	0.0332727	0.0415015 (Minnesota)
Digital Data Service Facilities - Special Access Line - 2.4 - 19.2 Kbps (<u>monthly rate</u>) ⁵	119.54	74.00 (on-island only)	71.40	81.91 (Florida)

¹ GTE Telephone Operating Companies Tariff F.C.C. No. 1, effective July 1, 1996 at 14th Revised Page 142.1.2.

² Id. at 6th Revised Page 143.1.

³ Id. at 3rd Revised Page 143.2.

⁴ Id. at 2nd Revised Page 143.3.

⁵ Id. at 62nd Revised Page 193.